

Lauren Hansen (CA BAR NO. 268417)  
Melissa A. Morris (CA BAR NO. 233393)  
PUBLIC INTEREST LAW PROJECT  
449 15th St., Suite 301  
Oakland, CA 94612-06001  
Tel: (510) 891-9794  
Fax: (510) 891-9727  
Email: lhansen@pilpca.org

Lili V. Graham (CA BAR NO. 284264)  
DISABILITY RIGHTS CALIFORNIA  
350 S Bixel Street, Ste 290  
Los Angeles, CA 90017-1418  
Tel: (213) 213-8000  
Fax: (213) 213-8001  
Email: Lili.Graham@disabilityrightsca.org

ATTORNEYS FOR PROPOSED INTERVENORS  
HOSPITALITY HOUSE; COALITION ON  
HOMELESSNESS; AND FAITHFUL FOOLS

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

COLLEGE OF THE LAW, SAN FRANCISCO a  
public trust and institution of higher education duly  
organized under the laws and the Constitution of the  
State of California; FALLON VICTORIA, an  
individual; RENE DENIS, an individual;  
TENDERLOIN MERCHANTS AND PROPERTY  
ASSOCIATION, a business association; RANDY  
HUGHES, an individual; and KRISTEN  
VILLALOBOS, an individual,

Plaintiffs,  
v.

CITY AND COUNTY OF SAN FRANCISCO, a  
municipal entity,  
Defendant.

**Case No. 4:20-cv-03033-JST**

**INTERVENORS' RESPONSE TO  
PLAINTIFFS' MOTION TO  
ENFORCE STIPULATED  
INJUNCTION**

Action Filed: May 4, 2020

Action Closed: Oct. 7, 2020

**ASSIGNED FOR ALL PURPOSES  
TO THE HONORABLE JON S.  
TIGAR, COURTROOM 6**

Date: 05/23/2024

Time: 2:00 p.m.

Action Filed: 05/04/2020

Trial Date: (TBD)

1 Michael David Keys (CA BAR NO. 133815)  
2 BAY AREA LEGAL AID  
3 1800 Market Street, 3<sup>rd</sup> Floor  
4 San Francisco, CA 94102  
5 Tel: (415) 982-1300  
6 Fax: (415) 982-4243  
7 Email: mkeys@baylegal.org  
8  
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1           **I.       INTRODUCTION**

2           This matter has been dismissed for over three and a half years, and Plaintiffs now  
 3 complain that the City is not making all “reasonable efforts...to permanently [reduce] the  
 4 number of tents, along with all other encamping materials and related personal property, to zero”  
 5 because there are now allegedly 71 tents in the neighborhood, compared with the purported 22  
 6 when the Parties dismissed this case. Notably, Plaintiffs offer scant evidence that the City is  
 7 violating the injunction; they have not even described the standard they believe the City should  
 8 adhere to in order to comply. The material terms of the injunction had been fulfilled at the  
 9 conclusion of the declared COVID-19 emergency; and, to the extent there are any remaining  
 10 provisions, they are too vague to be enforceable in a post-COVID-19 environment. The Plaintiffs  
 11 also wrongly conflate the preliminary injunction ruling in *Coalition on Homelessness, et al. v.*  
 12 *City and County of San Francisco, et al.* (case no. 22-cv-05502-DMR, 2022) with this case. The  
 13 injunction has run its course, and Intervenor’s respectfully request that the Court deny Plaintiffs’  
 14 motion.

15           **II.       FACTUAL AND PROCEDURAL BACKGROUND**

16           On May 4, 2020, at the height of the COVID-19 pandemic, Plaintiffs filed suit against the  
 17 City and County of San Francisco (City) alleging causes of action complaining about the  
 18 unhoused population in the Tenderloin, the number of tents present on City sidewalks, and  
 19 narcotics sales and use. ECF No. 1. Three organizations that serve unhoused people—Hospitality  
 20 House, Coalition on Homelessness, and Faithful Fools promptly sought leave to intervene in the  
 21 lawsuit to ensure that the needs and perspectives of unhoused Tenderloin residents would be  
 22 represented in any decisions that were made in the case—whether decisions made by the Court  
 23 or decisions made by the parties via settlement. ECF No. 43.

24           Intervenor’s include nonprofit grassroots and service organizations that engage directly  
 25 with unhoused individuals living in the Tenderloin. ECF Nos. 43-2, 43-3, 43-4. All have well  
 26 over 80 years of experience of serving unhoused Tenderloin residents. *Id.* Hospitality House has  
 27 a long history developing peer-based and culturally appropriate programs for the communities  
 28 they serve. ECF No. 43-2, ¶¶6-15. Its mission is to build community strength by advocating for

1 policies and rendering services which foster self-sufficiency and cultural enrichment. *Id.*, ¶¶8-10.  
 2 Faithful Fools is a nonprofit dedicating to meeting unhoused people where they are through  
 3 programming in the arts, education, and advocacy. ECF No. 43-3, ¶¶2-4. The Coalition on  
 4 Homelessness (COH) is a non-profit organization that organizes unhoused people and front-line  
 5 service providers to create permanent solutions to homelessness. ECF No. 43-4, ¶¶3-13. These  
 6 organizations intervened due to the concerns that the interests of unhoused individuals were  
 7 being disregarded amidst the City’s failure to provide sufficient housing, shelter, and services.  
 8 ECF No. 43-2, ¶¶21-29; ECF No. 43-3, ¶¶12-14; ECF No. 43-4, ¶¶14-25. Their particular  
 9 concern extended to the settlement negotiations that would resolve the fate of unhoused people in  
 10 the Tenderloin, absent any input from the unhoused community. *Id.*; ECF No. 43-3, ¶36. They  
 11 moved to intervene on June 9, 2020. ECF No. 43. Settlement negotiations between Plaintiffs and  
 12 the City continued, and although Intervenors tried to join those settlement negotiations, the other  
 13 parties denied them access to a seat at the table. ECF No. 59; ECF No. 59-1, ¶¶3-5; ECF No. 59-  
 14 2, ¶14; ECF 59-3, ¶¶ 9-11, 13.

15 Three days later, Plaintiffs and the City filed a Joint Request for Entry of Stipulated  
 16 Injunction. ECF No. 51. After supplemental briefing by the parties, the Court granted  
 17 intervention and also approved the stipulated injunction. ECF Nos. 69, 71. In its order, the Court  
 18 stated that Intervenors “will be free to attempt to modify or improve upon the original parties’  
 19 settlement by negotiation or motion.” ECF No. 69 at 7.

20 The City received pandemic-era funding from the federal government and used it in part  
 21 to comply with the injunction by moving unhoused people into Shelter-In-Place hotels and safe  
 22 sleeping sites. Friedenbach Decl. at ¶¶12, 18; Wilson Decl. at ¶8; Dennison Decl., ¶9.  
 23 Intervenors worked daily with City staff to ensure that unhoused people were placed in shelter  
 24 that was appropriate for their needs, including ensuring that the City made reasonable  
 25 accommodations for people with disabilities. Wilson Decl. at ¶¶8-9; Friedenbach Decl. at ¶¶12-  
 26 13; Dennison Decl. at ¶¶9-11. As of July 10, 2020, the City had reduced the tent count by 70%.  
 27 ECF No. 75 at 2. It offered alternative sleeping options to 546 people within the Tenderloin. *Id.*  
 28 472 people were relocated to hotels, 81 to safe sleeping sites, and 10 were placed in shelters. *Id.*

1 On September 29, 2020, all of the parties—Plaintiffs, Defendant, and Intervenor, agreed  
2 to dismiss the lawsuit. The COVID-19 state of emergency was still in effect, and pursuant to the  
3 terms of the stipulated injunction and F.R.C.P. Rule 41(a)(2), the Court retained continuing  
4 jurisdiction to enforce the terms of the injunction. ECF No. 98-99. The Court administratively  
5 closed the case on October 7, 2020. The case has remained closed for the past three-and-a-half  
6 years with no substantive activity until this motion.

7 Since then, the City has continued to clear tents and remove unhoused people from the  
8 Tenderloin. Friedenbach Decl., ¶8, 11; Wilson Decl., ¶¶13-14. It scheduled and conducted  
9 enforcement actions in the Tenderloin, throughout the past three-and-a-half years, and as recently  
10 as April 17, 2024. *Id.* It announced that it will enforce the laws against purportedly “voluntarily  
11 homeless” individuals. Hansen Decl., ¶7, Exh. 1. It has a written policy that allows for  
12 enforcement under certain conditions. Hansen Decl., ¶8, Exh. 2. In fact, the City has conducted  
13 dozens of encampment resolutions in recent months, including cleaning and clearing the area  
14 around the Dreamforce Conference. Friedenbach Decl., ¶¶8, 11; Hansen Decl., ¶¶9-10, Exh. 3. In  
15 her State of the City speech, Mayor Breed touted these efforts, stating that the “the City has  
16 helped more than 1,500 people into shelter from encampments, and the number of tents on City  
17 streets is down 37% in the last six months, which is at the lowest levels since before 2018.”  
18 Hansen Decl., ¶10, Exh. 4. Despite these efforts, there are still many people experiencing  
19 homelessness in San Francisco. Wilson Decl., ¶¶6-7; Friedenbach Decl., ¶14; Dennison Decl.,  
20 ¶15. In the most recent Point-in-Time count, at least 7,754 people are experiencing  
21 homelessness, 4,397 living unsheltered. Hansen Decl., ¶11, Exh. 5 at 19. In the Tenderloin,  
22 3,324 people are unhoused, 1,723 of which are unsheltered. *Id.* at 20.

23 On September 8, 2023, Intervenor’s counsel received notice from the court scheduling a  
24 pre-settlement conference. ECF No. 102. Intervenor met with Plaintiffs and Defendant on  
25 October 2, and November 15, but reached no resolution. Hansen Decl., ¶¶4-6. Four months later,  
26 on March 14, 2024, Plaintiffs filed this Motion to Enforce the Stipulated Injunction.

27 //

28 //

1       **III.     ARGUMENT**

2       **A.   The Court Should Deny Plaintiffs’ Motion to Enforce the Stipulated Injunction**

3               **Because They Did Not Provide Sufficient Evidence to Prove that Defendant Is Not**  
 4               **Complying with the Injunction.**

5               Plaintiffs’ evidence in support of this motion is thin, at best. Plaintiffs provide just two  
 6 pieces of evidence in support of this motion: a declaration from the College of Law San  
 7 Francisco’s Chief Operating Officer citing the number of tents that are allegedly in the  
 8 Tenderloin Neighborhood and a City data dashboard that purportedly shows the number of open  
 9 shelter options available to unhoused people. Mtn. at 1:25-2:13. As explained further below, both  
 10 numbers are neither reliable snapshots nor sufficient evidence to prove that the City is violating  
 11 the injunction.

12              Plaintiffs state that where a party is subject to an injunction and the movant demonstrates  
 13 *prima facie* evidence of non-compliance, the district court is empowered to enforce the  
 14 injunction, and cites *Armstrong v. Brown*, 857 F. Supp. 2d 919, 950-51 (N.D. Cal. 2012). Mtn. at  
 15 10:2-6. In *Armstrong*, inmates with disabilities moved to enforce a longstanding class action  
 16 consent decree mandating that state prison officials track and accommodate the needs of  
 17 prisoners with disabilities, ensure access to a grievance procedure, and carry out a revised plan to  
 18 which the State had previously agreed. *Armstrong*, 857 F. Supp. 2d 919, 923-24. Far from the  
 19 two-paragraph assertion of violations in this motion, the *Armstrong* Plaintiffs “submitted  
 20 substantial evidence, including more than sixty declarations from class members, demonstrating  
 21 that class members in jails throughout the State are injured and are denied access to housing,  
 22 programs, and services because of Defendants’ failure to accommodate their disabilities.” *Id.* at  
 23 931. The Court then went on to summarize the “overwhelming and disturbing” evidence,  
 24 describing other data and reports provided by the Plaintiffs that showed that the State was not  
 25 meeting its obligations under the consent decree. *Id.* at 931-33.

26              In this case, the College of Law’s Chief Operating Officer Ms. Bailard stated that  
 27 between May 2020 and August 2021, the College of Law “acquired tent and makeshift shelter  
 28 counts from the Tenderloin Community Benefits District, which received the information from

Urban Alchemy.” Bailard Decl. at ¶3. She states that when the action was filed there were 448 tents in the Tenderloin Neighborhood. *Id.* at ¶4. She goes on to say that in February 2024, the College of Law partnered with Urban Alchemy to conduct a new tent count, and cites 71 total tents and makeshift shelters, or 16% of the original number when Plaintiffs filed suit. *Id.* at ¶6. She provides no other support for this motion—no documentation, no report, no pictures, no non-hearsay statements, nothing else that shows a violation of the provision of the injunction indicating that the City will make “reasonable efforts” to reduce the number of tents to zero.

Plaintiffs’ “a-ha moment,” intended to provide *prima facie* evidence to support their motion, is pointing to the City’s data dashboard, which changes and is updated daily, that ostensibly shows that there are open shelter beds that the City can offer to unhoused people in the Tenderloin Neighborhood. First, these shelter beds are intended to be available to *all* unhoused people in the City, not just those in the vicinity of the College of Law. Hansen Decl., ¶12, Exh. 6 at 1. Second, the numbers are by their own admission not an accurate indicator of available beds, and whether they are actually accessible for individuals, including people with disabilities. The site has various disclaimers, including that “many unoccupied units are **not immediately available for placement.**” *Id.* at 2 (emphasis in original). This could be for a variety of reasons, including that the individual unit may need repair or maintenance, referrals may be limited by provider capacity, beds might be temporarily held to support other initiatives, may not be accessible or that they might be reserved for particular populations other than those in the Tenderloin, like those receiving benefits under San Francisco’s County Adult Assistance Program. *Id.* Plaintiffs rely on this dashboard to make a conclusory announcement: “[t]hus, the City is in breach of its obligations under the Stipulated Injunction to make all reasonable efforts and take associated measures to achieve clear sidewalks in the Tenderloin.” Mtn. at 6:11-13. In fact, there is currently a waitlist for shelter in the City and far more unhoused people than shelter beds. Friedenbach Decl., ¶14; Wilson Decl., ¶7; Exh. 5 at 19. The Court should deny the Plaintiffs’ motion because Plaintiffs have not proved that the City has violated the injunction.

**B. The City Has Complied with All of the Substantive Terms in the Injunction, and the Provisions Plaintiffs Are Trying to Enforce Are So Vague as to Be Unenforceable.**



1           The City has complied with all material terms of the injunction. In their motion, Plaintiffs  
 2 appear to dispute the City's compliance with its obligation to "make *all* reasonable efforts to  
 3 achieve the shared goal of permanently reducing the number of tents, along with all other  
 4 encamping materials and related personal property, to zero." Mtn. at 1:4-2:3; ECF No. 71 at 3. In  
 5 addition, Plaintiffs cite to the following provisions:

- 6           • "[D]iscourage additional people from erecting tents in the neighborhood."
- 7           • "[T]ake action to prevent re-encampment."
- 8           • "[E]mploy enforcement measures for those who do not accept an offer of shelter or safe  
 sleeping sites to prevent re-encampment."

9 (Emphasis added.) But this language is too vague to be unenforceable in the context of the end of  
 10 the declaration of the COVID-19 emergency. The hotel rooms made possible by federal funds  
 11 during the emergency are no longer available. What may have been reasonable then is not  
 12 possible now. And notably, the injunction fails to define or set forward any parameters as to what  
 13 City actions are "reasonable" what the City will do to "discourage" unhoused people from  
 14 erecting tents, what "actions" the City will take to prevent re-encampment, or what the City will  
 15 do to "employ" enforcement measures. The injunction also lacks any explicit language that the  
 16 shelter offered must be actually available appropriate for a person's individual needs, and  
 17 accessible to people with disabilities.

18           Section II of the stipulated injunction, the section that includes the bulk of the terms,  
 19 indicates that it applies "During the COVID-19 emergency," but the City's declared state of  
 20 emergency related to COVID-19 expired on February 28, 2023. ECF No. 71 at 2. The injunction  
 21 was timebound to the duration of the declared state of emergency and its terms expired with the  
 22 declared state of emergency on February 28, 2023. If any further proof of the temporal limitation  
 23 of the injunction were needed, it can be found in the dispute resolution provision in Section VI,  
 24 which refers to the "unprecedented" "current crisis."

25           The only provision of the injunction that could survive the expiration of the COVID-19  
 26 emergency is Section VII, which consists of a declaration that "[t]he parties agree to work  
 27 together to improve living conditions in the Tenderloin neighborhood for the long term." The  
 28

parties' purported dispute does not appear to be in any way related to a claimed breach of this provision.

**C. The *Coalition* Injunction and the Plaintiffs' Injunction Do Not Conflict.**

Plaintiffs acknowledge that the City is currently bound by the preliminary injunction issued by Judge Ryu and affirmed in part by the Ninth Circuit in *Coalition on Homelessness v. City and County of San Francisco (COH v. SF)*. *Coal. on Homelessness v. City & Cnty. of San Francisco*, 647 F. Supp. 3d 806, 842 (N.D. Cal. 2022), *aff'd in part, remanded in part*, No. 23-15087, 2024 WL 125340 (9th Cir. Jan. 11, 2024), and *aff'd*, 90 F. 4th 975 (9th Cir. 2024). Mtn. at 2-4. That injunction enjoins the City "from enforcing or threatening to enforce, or using California Penal Code section 148(a) to enforce or threaten to enforce, the following laws and ordinances to prohibit involuntarily homeless individuals from sitting, lying, or sleeping on public property:

- California Penal Code section 647(e)
- California Penal Code section 370
- California Penal Code section 372
- San Francisco Police Code section 168
- San Francisco Police Code section 169

*Id.* at 842. In a published opinion, the Ninth Circuit affirmed the preliminary injunction. As set forth in the unpublished memorandum cited by Plaintiffs, the Ninth Circuit also remanded the matter to the district court to ensure the "preliminary injunction applies only to the City's enforcement of the enjoined laws as to the involuntarily homeless" and to confirm that the injunction prohibits verbal threats to enforce the subject ordinances. *Coal. on Homelessness v. City & Cnty. of San Francisco*, No. 23-15087 (9th Cir. Jan. 11, 2024), 2024 WL 125340 \*1; *see also* Mtn. at 3. The Ninth Circuit left the entirety of the injunction in place pending further proceedings at the district court level *Coal. on Homelessness v. City & Cnty. of San Francisco*, 2024 WL 125340 at \*2.

Plaintiffs also concede, at least in places, that no substantive conflict exists between the stipulated injunction in this case and the *COH v. SF* preliminary injunction. *See* Mtn. at 4-7; *see*

1 *also* UC College of Law, Amicus Br. at 6-9, (Ninth Cir. No. 23-15087, Dkt. No. 17-2 at 10-12.  
 2 Indeed, the notion that the stipulated injunction and the preliminary injunction in *COH v. SF*  
 3 somehow conflict with each other is a phantasm that the City has raised multiple times in  
 4 multiple fora without success. *See, e.g., Coal. on Homelessness v. City & Cnty. of San Francisco*,  
 5 Case No. 22-cv-05502-DMR (N.D. Cal. Apr. 3, 2023), 2023 WL 2775156 (noting denial  
 6 administrative motion to clarify preliminary injunction where City had asserted it was “subject to  
 7 conflicting obligations” in this case and the *COH v. SF* injunction); City of San Francisco’s  
 8 Administrative Motion to Relate Cases, ECF No. 116 at 3-4 (denied at ECF No. 121); And there  
 9 is no way the two could conflict. The portion of the stipulated injunction at issue in this motion  
 10 says that “the City will make all *reasonable efforts* to achieve the shared goal of permanently  
 11 reducing the number of tents, along with all other encamping materials and related personal  
 12 property, to zero.” ECF No. 71 at 3 (emphasis added). Reasonable efforts, presumably, do not  
 13 include efforts that would break the law or violate a court order. The injunction goes on to say:  
 14 “All parties shall respect the legal rights of the unhoused of the Tenderloin in all manners,  
 15 including in relation to relocating and removing the unhoused, the tents, the other encamping  
 16 materials and other personal property.” *Ibid.* The *COH v. SF* injunction does not command  
 17 anything to the contrary; rather, it compels the City to follow the law as set forth in controlling  
 18 Ninth Circuit precedent and the City’s own policies. *See Coal. on Homelessness v. City & Cty. of*  
 19 *San Francisco*, 90 F.4th 975, 979 (noting that although the petition for certiorari in *Johnson v.*  
 20 *City of Grants Pass*, 72 F.4th 868, 876 (9th Cir. 2023), cert. granted 144 S. Ct. 679 (U.S. Jan.,  
 21 12, 2024) (No. 23-175), was pending, that the Ninth Circuit “remain[s] bound  
 22 by *Martin* and *Johnson*, as does the district court.”). The injunction understands “reasonable  
 23 efforts” to be those that “respect the rights of the unhoused. . .” and the *COH v. SF* injunction  
 24 prohibits the City from violating unhoused individuals’ rights. Therefore, any action that would  
 25 violate the *COH v. SF* injunction would not reasonable for purposes of the injunction in this case.

26 Plaintiffs argue that Judge Ryu lacks authority to countermand the prior orders of this  
 27 Court, but the converse is also true. *See* Mtn. at 8; *see also United States v. Feathers*, Case No.  
 28 14-CR-00531-LHK (N.D. Cal. Dec. 19, 2016), 2016 WL 7337518 \*8. To the extent Plaintiffs

1 request the Court to order the City to take action that would violate the *COH v. SF* injunction—  
 2 e.g., taking enforcement action against individuals based on the unfounded assumption that they  
 3 have refused shelter or banishing involuntarily unsheltered Tenderloin residents to other parts of  
 4 the City under threat of citation or arrest—the Court should decline to do so.

5 **D. If the Court Issues an Order Requiring the City to Remedy Any Violations of the**  
 6 **Injunction, It Should Include the City Making Additional Shelter Options Available**  
 7 **to Unhoused People.**

8 As stated previously, Intervenor’s position is that the portions of the stipulated injunction  
 9 that comprise Plaintiffs’ motion have run their course and are no longer enforceable. If the Court  
 10 does find that a remedy is needed, it should be one with a focus of ensuring that everyone who  
 11 wants and needs shelter has access to it, not with displacing unsheltered individuals from the  
 12 immediate vicinity of the College of the Law to beaches, plazas, or other parts of the City where  
 13 they will continue to live unsheltered and with even less support than they currently have. *See*  
 14 Mtn. at 11:2-11; Wilson Decl., ¶¶10-18; Friedenbach Decl., ¶¶7-10, 15-18, 19-20; Dennison  
 15 Decl. ¶¶7-15. Citations, arrests, move-along orders, clean-ups, and “resolutions” do not reduce  
 16 unsheltered homelessness because they do not address individuals’ underlying need for housing  
 17 and shelter. Of the various activities that the City has taken, the only ones that actually reduce  
 18 unsheltered homelessness are the ones that involve the provision of housing and shelter.

19 **IV. CONCLUSION**

20 For the preceding reasons, Intervenor respectfully request that the Court deny Plaintiffs’  
 21 motion.

22 DATED: April 18, 2024

Respectfully submitted,

23  
 24 PUBLIC INTEREST LAW PROJECT  
 25 DISABILITY RIGHTS CALIFORNIA  
 26 BAY AREA LEGAL AID

27 By:



28 LAUREN HANSEN  
 Attorneys for Intervenor